

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)
)
)
vs.) No. 15-CR-10150-GAO
)
MITCHELL DANIELLS,)
Defendant.)

BEFORE THE HONORABLE GEORGE A. O'TOOLE, JR.
UNITED STATES DISTRICT JUDGE
JURY TRIAL - DAY SEVEN

John Joseph Moakley United States Courthouse
Courtroom No. 22
One Courthouse Way
Boston, Massachusetts 02210

May 29, 2019
10:03 a.m.

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Mechanical Steno - Computer-Aided Transcript

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1 P R O C E E D I N G S

2 THE CLERK: All rise for the court and the jury.

3 (Court and jury enter.)

4 THE COURT: All set. Good morning, Jurors.

5 JURORS: Good morning.

6 THE COURT: I appreciate your patience. We had a few
7 logistics to deal with.

8 JURY CHARGE - PART ONE

9 I have two major responsibilities in a trial such as
10 this. The first is to preside over the case to make whatever
11 procedural or evidentiary rulings are necessary in the course
12 of the trial. You have seen that I've been doing that. The
13 other major responsibility is at this stage of the proceedings
14 to give you what we call instructions in the principles of law
15 that pertain to the matters you've heard about and about which
16 you will have to make some decisions. I'm going to give you
17 these instructions about the law that applies to these matters.

18 You can think of this as sort of a short course in all
19 the law you need to know in order to decide the issues in this
20 case. You should not resort to any other ideas you might have
21 from other sources about what the law is or might be with
22 respect to these issues, but take it that what I tell you is a
23 complete and accurate summary of the principles of law that are
24 to be applied in this case.

25 It is my duty to set forth these principles fully and

1 accurately, without regard to any personal or private views I
2 might have about the wisdom or prudence of these principles, or
3 whether there might be different or additional ones that could
4 be applied, but rather, to tell you what the law is with
5 respect to these matters.

6 And you have a similar duty to accept and faithfully
7 apply the principles sensibly and without any personal --
8 without regard to any personal or private views you might have
9 about the wisdom or prudence of the principles or whether there
10 might be different or additional ones that could be applied.
11 Instead, accept that these are the principles of law that apply
12 to these matters. Consider the instructions sensibly, as a
13 whole, and apply them faithfully.

14 I am going to talk about two general areas, and I'm
15 going to divide my time in doing it. First, I'm going to talk
16 about the principles that relate to the particular offenses or
17 crimes that are charged by the indictment in this case; that
18 is, I will tell you what the government is required to prove in
19 order to convict the defendant of the charges that are made
20 against him.

21 After I've done that, the lawyers will have their
22 opportunity to present their closing statements to you. I
23 think it will be helpful to you in listening to the closing
24 statements to have understood from me what the principles are
25 that relate to the charge. After the closing statements, I'll

1 have some more to say to you about the manner in which you'll
2 think about the evidence, discuss it, and come to some
3 judgments about it.

4 Before I define the elements of the charges made, let
5 me make a preliminary comment in general about the law of
6 federal crimes:

7 As I'm sure you all understand, our Nation is a
8 federal republic, and both the states and the national
9 government have in their respective spheres the authority to
10 enact laws, including laws prohibiting and punishing certain
11 conduct as criminal. Federal criminal law consists of laws
12 enacted by Congress that define certain acts as criminal. A
13 typical formula of a federal criminal statute is for Congress
14 to provide that whoever does A, B and C commits an offense. We
15 refer to that described activity -- that is, the A, B, and C --
16 as the elements of a particular crime.

17 Where all the defined and necessary elements of the
18 crime have occurred in fact, the crime has been committed.
19 Where all the defined and necessary elements have not occurred
20 in fact, the crime has not been committed. If some necessary
21 elements are proved but some are not, the crime has not
22 occurred. The task of a jury in a criminal prosecution is to
23 determine whether the government has proved as a factual matter
24 all the defined and necessary elements beyond a reasonable
25 doubt. Your focus should be on that question.

1 Let me turn to the specific offenses that are charged
2 in the indictment.

3 The indictment in this case presents four counts.
4 Each count alleges a distinct federal criminal offense.

5 Count One of the indictment charges that on or about
6 March 28, 2015, the defendant, while he was under indictment
7 for a crime punishable by imprisonment for a term exceeding one
8 year, received a firearm that had been shipped or transported
9 in interstate or foreign commerce, this in violation of Section
10 922(n) of Title 18 of the United States Code.

11 For you to find the defendant guilty of this charge,
12 the government must prove three elements or factual
13 propositions beyond a reasonable doubt:

14 First, the defendant was in fact under indictment for
15 a crime punishable by imprisonment for a term of more than one
16 year on or about the date alleged.

17 Second, that the defendant, acting both knowingly and
18 willfully, received the firearm identified in Count One during
19 the time that he was under indictment.

20 Third, that the firearm had at some time traveled in
21 interstate or foreign commerce. Let me define some of those
22 terms.

23 Being under indictment for these purposes means being
24 formally charged with a criminal offense punishable by
25 imprisonment for a term exceeding one year. I instruct you

1 that the criminal complaints issued out of the Waltham District
2 Court qualify as indictments under the statutory definition,
3 and that the crimes charged in those criminal complaints are
4 punishable under Massachusetts law by imprisonment for a term
5 exceeding one year.

6 The term "firearm" means any weapon which will expel,
7 or is designed to expel, a projectile by action of an
8 explosive, including the frame or receiver of any such weapon.
9 It is not necessary for you to determine whether the firearm
10 was in working condition at the time it was received.

11 To "receive" a firearm means knowingly to take
12 possession of it.

13 To "possess" means to have something within a person's
14 control. This does not necessarily mean that the defendant
15 must hold it physically, that is, have actual physical
16 possession of it. As long as the firearm is within the
17 defendant's control, he possesses it. A person who has direct
18 physical control of something on or around his person is said
19 to be in actual possession of it. A person who is not in
20 actual possession but who has both (a) the power or ability and
21 (b) the intention to exercise control over something is in
22 constructive possession of it. For example, I can be said to
23 be in possession of the books on the shelves in my office even
24 though they are there and I am here, because I have both the
25 ability and the intention to exercise control over them. If

1 you find that the defendant either had actual possession or
2 that he had the power and intention to exercise control over
3 the firearm, even though it may not be in his physical
4 possession, you may find the government has proven possession.

5 A person acts "knowingly" if he acts voluntarily with
6 knowledge of the relevant facts and not because of mistake or
7 accident. The government must prove the defendant knew that he
8 was under state indictment at the time he received a firearm,
9 if he did, but it is not necessary to prove that the defendant
10 knew the crime was punishable by a term in prison of more than
11 one year. It is enough for the government to prove that the
12 defendant knew that the charge had been made against him at the
13 time that he allegedly received the firearm.

14 A person acts "willfully" if he acts with the intent
15 or bad purpose to disobey or disregard the law. The defendant
16 need not be aware of the specific law or federal statute that
17 his conduct might be violating, but he must act with the intent
18 to do something that the law forbids.

19 The question whether the defendant acted knowingly or
20 willfully, those questions are questions of fact for you to
21 determine, just as you determine any other fact at issue.
22 These questions require you to make a determination about the
23 state of a person's mind and the purpose with which he has
24 acted at the time of the acts in question. Direct proof of
25 what someone knew or intended is often not available, and it is

1 not necessarily required.

2 The ultimate fact of knowledge or intent, though
3 subjective, may be established inferentially by circumstantial
4 evidence, based on a person's outward manifestations, his
5 words, his conduct, his acts, and all the surrounding
6 circumstances disclosed by the evidence, and the rational or
7 logical inferences that may be drawn from therefrom.

8 The term "interstate or foreign commerce" requires the
9 government to prove that the firearm had at some point been
10 shipped or transported between one state and another state, or
11 between the United States and another country. It is not
12 necessary for the government to prove that the defendant had
13 any involvement in the shipping or transportation of the
14 firearm, or that the defendant knew that the firearm had
15 previously been shipped or transported in interstate commerce.

16 Count Two of the indictment charges that on various
17 dates between March 2013 and June 18, 2015, the defendant
18 engaged in the business of dealing in firearms without a
19 license, in violation of Section 922(a)(1)(A) of Title 18 of
20 the United States Code. The relevant portion of that statute
21 reads, "It shall be unlawful for any person, except a licensed
22 dealer, to engage in the business of dealing in firearms."

23 For you to find the defendant guilty of this charge,
24 the government must prove three facts beyond a reasonable
25 doubt:

1 First, that on or about the dates set forth in the
2 indictment, the defendant engaged in the business of dealing in
3 firearms;

4 Second, that the defendant engaged in such business
5 without a license issued under federal law; and

6 Third, that the defendant acted willfully.

7 The term "firearm" has already been defined for you.
8 A "firearm" is any weapon which will expel, or is designed to
9 expel, a projectile by the action of an explosive. This
10 includes the frame or receiver of such weapon.

11 The term "engaged in the business" means a person who
12 devotes time, attention, and labor to dealing in firearms as a
13 course of trade or business with the principal objective of
14 livelihood and profit through the repetitive purchase and
15 resale of firearms. The term "with the principal objective of
16 livelihood and profit" means that the intent underlying the
17 sale or disposition of firearms is predominantly a financial
18 one, that is, conducted for the purpose of profit or financial
19 gain.

20 A person who deals in firearms only as a hobby or to
21 maintain a personal gun collection, and not as an essentially
22 economic activity or means of making money is not engaged "in
23 the business" of dealing in firearms.

24 One may be engaged "in the business" of dealing in
25 firearms even though the business does not require all, or even

1 a substantial portion, of his working time. Nor is it
2 necessary for the government to show that a profit was actually
3 made.

4 To act "willfully" has been defined for you. It means
5 to act with the intent or bad purpose to do something that the
6 law forbids. As with any other fact at issue in the case, the
7 intent and purpose of an action may be established through
8 evidence that is either circumstantial or direct.

9 Count Three of the indictment charges the defendant
10 with obstruction of justice in violation of Section 1503 of
11 Title 18 of the United States Code. The relevant portion of
12 that statute reads, "Whoever corruptly endeavors to influence,
13 obstruct, or impede, the due administration of justice" shall
14 be guilty of an offense.

15 This law is designed to prevent the distortion or
16 miscarriage of justice resulting from improper interference
17 with the processes of justice. It is aimed at any means by
18 which the orderly and due administration of justice may be
19 improperly interfered with and thus impeded, thwarted or
20 corrupted. The due administration of justice refers to the
21 fair, impartial, uncorrupted and unimpeded investigation,
22 prosecution, disposition or trial of any matter conducted or to
23 be conducted in the courts of the United States.

24 In order to prove the defendant guilty of obstruction
25 of justice the government must prove the following three

1 elements of the offense beyond a reasonable doubt:

2 First, that there was a judicial proceeding pending
3 before a federal court at the time alleged in the indictment;.

4 Second, that the defendant knew of the existence of
5 the proceeding in question; and

6 Third, that the defendant corruptly endeavored to
7 obstruct, influence, or impede the administration of justice in
8 the proceeding.

9 The term "judicial proceeding" includes every step in
10 a matter or proceeding in the federal courts to assure the just
11 consideration and determination of the rights of the parties to
12 that matter. You are instructed that a federal criminal
13 prosecution is a judicial proceeding in the relevant sense. So
14 is a grand jury investigation.

15 The question whether a person had knowledge of
16 something is a question of fact for you to determine, like any
17 other fact question, based on the direct and circumstantial
18 evidence presented to you during the course of the trial.

19 To "corruptly endeavor" to interfere or impede means
20 acting with the improper motive or purpose of obstructing
21 justice. A corrupt intent need not be the only motive for the
22 defendant's actions, but it must have actually been one of the
23 motives. An "endeavor" to obstruct need not have succeeded.
24 Any effort, whether successful or not, that is made corruptly
25 for the purpose of obstructing or impeding the proceeding is

1 punishable under the statute.

2 Count Four of the indictment charges the defendant
3 with witness tampering in violation of Section 1512(b)(1) of
4 Title 18 of the United States Code. That statute provides in
5 relevant part:

6 Whoever knowingly, corruptly persuades another person,
7 or attempts to do so, with the intent to influence, delay or
8 prevent the testimony of any person in an official proceeding,
9 commits the offense of witness tampering.

10 The statute is designed to protect persons who are
11 victims of federal crimes, persons who may be called to testify
12 or give evidence in a federal proceeding, either civil or
13 criminal, and persons who have information about federal
14 crimes. The integrity of the federal system of justice depends
15 upon the cooperation of victims and potential witnesses. If
16 persons with relevant information do not come forward, produce
17 evidence and appear when summoned, the criminal justice system
18 may be significantly impaired. The statute was devised to make
19 it unlawful for anyone to tamper with such a witness in the
20 manner described in the statute.

21 The defendant is charged with knowingly corruptly
22 persuading, or attempting to corruptly persuade, potential
23 witnesses in the prosecution against him, with the attempt to
24 influence, delay or prevent their testimony in the present
25 prosecution.

1 In order to prove the defendant guilty of tampering
2 with a witness by corrupt persuasion, the government must prove
3 each of the following elements beyond a reasonable doubt:

4 First, that on or about the date or dates alleged, the
5 defendant corruptly persuaded or attempted to corruptly
6 persuade at least one of the identified witnesses;

7 Second, that the defendant did so knowingly;.

8 Third, that the defendant believed that there was a
9 current or future official proceeding in which the testimony
10 might occur; and

11 Fourth, the defendant did so with the intent to
12 influence, delay or prevent the testimony of the witnesses in
13 the expected official proceeding.

14 To "corruptly persuade" means to act knowingly with a
15 wrongful purpose to convince or induce another person to engage
16 in certain conduct.

17 To act with the intent to influence the testimony of a
18 witness means to act for the purposes of getting the witness to
19 change or color or shade his or her testimony in some way. It
20 is not necessary for the government to prove that a witness's
21 testimony was in fact changed in any way.

22 An official proceeding means a proceeding before a
23 court, judge, or federal agency. A federal criminal trial is
24 an official proceeding for purposes of the statute. The law
25 does not require the proceeding be pending at the time of the

1 actions, as long as the proceeding was foreseeable such that
2 the defendant knew that his actions were likely to affect the
3 proceedings.

4 So those are the elements of the respective offenses.

5 A couple of final words about the language of the
6 indictment. You'll have a copy of the indictment for your
7 reference purposes. The indictment uses the phrase "in or
8 about" when it alleges times and dates. The government is not
9 required to prove that events occurred on the exact dates
10 alleged. It is sufficient if it proves the events occurred on
11 dates within the range specified in the indictment.

12 The indictment sometimes uses the conjunctive word
13 "and." It is sufficient if the government proves the offense
14 in the disjunctive, as if the word "or" had also been used. In
15 other words, an allegation of "and" includes "and/or." It's
16 just a quirk of federal pleading.

17 So that's the conclusion of the first part of my
18 instructions. We'll now turn to the closing statements by
19 counsel. And when they're finished, I'll have some more to say
20 to you about your deliberations.

21 The order of presentation of the closing arguments is
22 that the government presents its statement first, followed by
23 the defendant, and the government has an opportunity for a
24 brief rebuttal if it chooses.

25 I understand Mr. MacKinlay will speak for the

1 government.

2 MR. MacKINLAY: Thank you, Your Honor.

3 CLOSING ARGUMENT BY MR. MacKINLAY

4 MR. MacKINLAY: That man's a gun trafficker.

5 (Indicating.) Witness after witness came into the courtroom,
6 walked around up to the stand and told you so. And he was busy
7 too. In the space of just over two months, eight guns were
8 trafficked by this defendant. When the ATF came calling and
9 the walls started closing in on him, what did he do? He tried
10 to cover it up. And he did that in two ways. First, he told
11 witnesses to lie, and that's -- he told them not to testify,
12 not to come to this court, this very courtroom, before you and
13 to testify, but his plan, his scheme didn't work. You heard
14 from the witnesses, and they told you -- they pointed to him,
15 and they told you that he is an illegal gun dealer.

16 Now --

17 May we have the computers and the monitors, please,
18 Your Honor.

19 THE COURT: Yes. The front row is set up, but the
20 jurors in the back row, get your monitors ready.

21 MR. MacKINLAY: Thank you.

22 THE COURT: Are you ready to use it, Mr. MacKinlay?

23 MR. MacKINLAY: I am.

24 Thank you, Your Honor.

25 Now, the court has just provided a summary of the law

1 that is applicable, and obviously listen to the judge. He's
2 going -- has provided you a detailed account of the law. I
3 have a couple points I want to talk about before getting into
4 summarizing the evidence that supports the relevant charges as
5 we go through. With respect to engaged in the business of
6 dealing in firearms, a couple points to make, which are a
7 person has to devote a period of time and attention to
8 acquiring and selling guns principally to make money, although
9 we don't have to prove profit, and lastly it doesn't
10 necessarily have to be the defendant's primary job of
11 employment.

12 Let's talk about this gun trafficking scheme of the
13 defendant. How long was it going on? Well, PJ Copithorne took
14 the stand and told you since 2009. 2009, acquiring, selling
15 guns making money doing it. That was his testimony. Timothy
16 Bailey told you he saw the defendant with two guns on a prior
17 occasion, prior to the time that he purchased the gun in March
18 of 2015, he saw the defendant with two guns on a prior occasion
19 showing that he had been doing it for a period of time. And
20 when he went to make the deal and purchase the gun from the
21 defendant, what did the defendant tell him? Going down south,
22 down south to get some guns. I'll be back.

23 Who were his suppliers of guns to this gun trafficking
24 scheme? Well, first himself. You saw the 4473. His name is
25 on them. He bought guns in Pennsylvania. You can see that

1 he's the purchaser in the store. Those guns were in
2 Massachusetts and recovered in various locations in and around,
3 for example, Framingham, where he resided. He's one of the
4 suppliers. Who else? Will Roberts is a supplier. Why did he
5 turn to Will Roberts? Well, you know the answer to that
6 because according to -- Kenny Brobby told you that the
7 defendant said, "My license has been suspected or canceled or
8 terminated," something along those lines. Right? You remember
9 him. The testimony controls. But more than that, you also
10 heard that in 2014, the defendant had the case in the Waltham
11 District Court, and the NICS background check to purchase the
12 gun over the counter would have blocked him from buying a gun.
13 He needed to get another supplier, turn to a straw purchaser.
14 That's what the ATF called it, remember, a straw purchaser. In
15 this case William Roberts.

16 You also heard that he approached Ashley Turner and
17 asked her to buy some guns for him. She received pay from the
18 defendant. When she declined, he said, "Well, how about your
19 friends?" Those are the suppliers and potential suppliers of
20 guns in the scheme.

21 Who are the customers? The customers are people that
22 he was selling -- acquiring and then selling them to. He got a
23 sale, and we're going to talk about it in more detail, Timothy
24 Bailey. PJ Copithorne was going to be a customer. Remember,
25 he was going to get one of the four guns that he helped bring

1 back. Essentially it didn't happen because the defendant asked
2 for permission to sell it to someone else and did. But there
3 are others on the way back from one of the trips, and we'll go
4 through the text messages in a moment. Grambo. Remember the
5 text messages where Kenneth Brobby was in the car, and the
6 defendant is texting people trying to get in touch with
7 customers, using a code, a code that was easily cracked by
8 Kenneth Brobby and the ATF using numbers and using -- numbers
9 that were consistent with the caliber of the guns and also the
10 cost of the guns. So there were customers, also Alcides
11 Valentin, which was a customer that Kenneth Brobby provided to
12 the defendant, his friend in Worcester was looking for a gun,
13 too.

14 What else was involved in the gun trafficking scheme
15 of the defendant? He took the serial numbers off. Why? Well,
16 you know that. So you can't can trace back to the original
17 purchaser. He obliterated the serial numbers with a Dremel
18 tool. In addition to that, he did it for a reason. Why did
19 the defendant do all this? For profit. The profit is clear
20 when you look at the gun. The 9-millimeter Smith & Wesson that
21 Timothy Bailey purchased was bought over the counter in
22 Pennsylvania on March 27 by William Roberts. The defendant
23 brought it back, sold it on March 30, just three days later.
24 First bought for \$299.95 plus tax, sold the first time for \$800
25 to Timothy Bailey. Within one hour he sold it for \$1,500 to

1 what turns out to be an informant for the ATF. Profit? Of
2 course. Each gun had that much profit into it. That's why he
3 was trafficking guns. That's why he was engaged in the
4 business, to make money. What did PJ Copithorne tell you about
5 the defendant? He said he needed money. That's why he was
6 doing it.

7 I know we presented evidence of three trips from
8 Massachusetts to Pennsylvania and back. I'm just going to talk
9 about one trip. The one trip that I think best illustrates the
10 scope of his scheme. That's the March 27 trip -- 26, 27, 28,
11 down and back. You remember Kenneth Brobby met the defendant
12 at Framingham State College, loaned him \$300, went on a drive
13 down to Pennsylvania, met with Will Roberts at his house, slept
14 overnight. His child was there. You recall that.

15 And then Will Roberts, the defendant and Kenneth
16 Brobby went to not one but two stores -- remember that? -- and
17 acquired two guns on that day, one in each store. You remember
18 that at this time William Roberts told you that the defendant
19 was very particular about what guns he wanted. On one
20 occasion, a prior occasion, he provided a brochure. Remember,
21 he marked the brochure and showed what guns he wanted? On this
22 occasion you don't need the brochure. You have your own eyes
23 from the video inside the Sportsman's Outlet. Remember, Joshua
24 Kahle came and testified about the layout of the store, about
25 what's in the gun cases in the front of the store. And you see

1 the man in the white hat, well, that's the defendant on the
2 left side, and he's looking at a firearm in that section of the
3 case, and lo and behold, a couple of hours later, where does
4 William Roberts go? Right where he's told to go. Right where
5 he's told to go to buy the gun the defendant picked out. It's
6 the same spot. And you'll recall William Roberts picks up and
7 looks at the gun in the video and quickly hands it over and
8 purchases it.

9 The 4473, which I know you heard a lot about and it
10 was flashed in front of you dozens of times, the firearms
11 transfer record document shows the purchase of the gun to
12 William Roberts.

13 Now, at the house, or apartment I should say, where
14 William Roberts lived there was an argument before the
15 defendant and Kenneth Brobby returned to Massachusetts. That
16 argument in which Kenneth Brobby said words to the effect of --
17 again, your memory controls -- "These are nice. These guns are
18 nice. People are going to like these."

19 MR. DEMISSIE: Objection.

20 MR. MacKINLAY: Again, your memory of the testimony
21 controls, but words to that effect. And what is the response
22 from the defendant? "Shut up. Shh," words to that effect. He
23 didn't want William Roberts to know he was selling guns. They
24 get into the vehicle and they head back, and at that point
25 there is text messages, which these are taken from the

1 defendant's phone when he -- after he was later arrested, and
2 they show the date of March 29, the return trip, and the
3 terminology is -- I don't know if you'd call it code --
4 "thang," "piece." Those are what Brobby told you they're
5 referring to here. 8.75 is \$875. 8.5 is \$850. And the
6 negotiation between Grambo and the defendant for the sale of
7 the two guns that he'd just gotten in the store on videotape
8 with Will Roberts's assistance. "I got someone who want the
9 40." "I'll do 7 for that." "I got 8 for the 40." I mean,
10 these with gun dealers connecting with customers and
11 negotiating a price for the caliber. That's what was happening
12 at that point.

13 You also know that when -- on the trip back, the
14 defendant is contacting Timothy Bailey, whom he had told he was
15 going down south to get a gun. Remember that? And these text
16 messages going back and forth, Bailey testified that he said,
17 "Hurry up or we're going to lose it." And the text messages
18 also show that as well. "It might be already moved." "No,
19 hold that for me," says Bailey. "I'll get it in the AM," in the
20 morning. Later Bailey says, "You're going to come through,
21 bro?" And the defendant responds, "Yes in process, g."

22 That is, again, the gun dealer defendant negotiating
23 and planning this meeting and the sale of the gun that was
24 requested before he went down there with Timothy Bailey.

25 Now, what about the Timothy Bailey sale? You did hear

1 that he -- the sale between the defendant and Bailey took place
2 in the basement. There was no serial number on the gun. There
3 was no paperwork. There was a straw purchaser, William
4 Roberts, used to conceal Mr. Daniells's involvement. Does that
5 sound like a hobby or a private collection sale? Of course
6 not. Of course it's not. It's a gun dealer selling to a drug
7 dealer, who is also a felon in the basement of some apartment
8 building in Boston.

9 But the problem is on that particular gun, Smith &
10 Wesson 9-millimeter, the defendant made a mistake. You know
11 what his mistake was? The internal serial number. Remember
12 you heard from the agents that they were able to locate -- and
13 that's the bottom left-hand corner there -- the serial number
14 by just removing the slide. They didn't have to wait for the
15 processing by the crime labs. Literally March 30, the date of
16 the sale in Boston, they have the serial number and were
17 calling the gun store and reaching out for William Roberts'
18 parents saying, hey, we've got to talk to this guy.

19 The 4473 shows the gun was purchased by William
20 Roberts, as he told you he bought it, and then the serial
21 number that's on the internal matches up to the second page as
22 well.

23 Now, during that time, from March 30 to April 16, Will
24 Roberts did not tell the truth, and he told you that. And he
25 told you why. He did not tell the truth to the agents. And he

1 came in here and told you he didn't. When he went in to meet
2 with the lawyer on the 16th, he told the full account of what
3 happened and, moreover, he agreed to make recorded phone calls
4 with the defendant, to talk to him about the gun trafficking
5 that had just gone on.

6 And those calls and recordings are telling. At the
7 time of the sale and the time of the possession of the
8 9-millimeter Smith & Wesson by the defendant and subsequent
9 sale to Timothy Bailey, at that time period, the defendant had
10 charges pending in the Newton District Court. Let me talk
11 about this for a minute before I turn back to the calls. The
12 charges that were pending are charges that the court has
13 instructed you carry more than a year in jail and that the
14 charging method of the complaint on the two charges is an
15 appropriate charging instrument for purposes of the under
16 indictment.

17 So what do we need to establish that charge, that he
18 possessed the gun and that it was -- the firearm was working or
19 met the definition of a firearm, and it traveled in interstate
20 commerce, and that he knew that the case was pending, knew the
21 case was pending? He's going into the courthouse. The ATF
22 agent conducted surveillance. They took a picture of him going
23 into the courthouse.

24 What about the records? What do the records from the
25 courthouse show you? Well, they show you that Mitchell

1 Daniells had a pending case. The date was in 2014 when it
2 initially started. The charging instrument is a criminal
3 complaint, again in his name. The charge is possession of a
4 firearm, and the penalty is two and a half to five years, and
5 you can continue to read. But the docket sheet not only shows
6 that he was there on April 9 as the ATF agents surveilled him
7 and took pictures of him, they showed he was there on multiple
8 occasions back in 2014. In other words, the case was pending
9 as of the time of March 28 to 30, when he had the gun and sold
10 it to Timothy Bailey. He's clearly heading into court and
11 coming out of court at that point and heading for his car in
12 the parking lot of district court.

13 The gun traveled in interstate commerce. You heard
14 Special Agent Mattheu Kelsch describe that, that the shipping
15 records from Smith & Wesson indicated that it was shipped to
16 Connecticut and ultimately it was purchased in Pennsylvania
17 before it was actually transported back across state lines.
18 There certainly are multiple ways the weapon crossed state
19 lines establishing that element as well. You also heard from
20 Special Agent Kelsch that met the definition of being a
21 firearm. They all did.

22 So what did he do to try to cover up the efforts by
23 the ATF? Well, at first he tried to tell people to lie. Use
24 your common sense, members of the jury, because that's an
25 important attribute of what you have and what you bring to the

1 table and bring to your deliberation. Your common sense to
2 size up things and see whether things have a ring of truth.

3 When Mitchell Daniels tells Roberts, who's in
4 Pennsylvania, "Just tell them that the guns were stolen," does
5 that make any sense? The guns were found 500 miles away in
6 Massachusetts three days later, and William Roberts has never
7 been to Massachusetts. I mean, it makes no sense at all.
8 None.

9 Did the defendant improperly attempt to persuade the
10 witness, or for purposes of obstruction of justice, did he
11 improperly have the objective of influencing or obstructing
12 justice in this courthouse, in this matter? He certainly knew
13 the case was ongoing. He'd been charged and brought into
14 court. And the evidence that you saw clearly establishes that
15 his intent was to do just that, improperly influence witnesses
16 in the case that you have heard here over the past week or so.

17 What is the first evidence of that? Again, it's prior
18 to the time that -- it's prior, as initially when William
19 Roberts is involved in talking to the ATF, he texts back and
20 forth, "You may want to call a lawyer," the defendant says, "to
21 ask a few questions." "You don't know who robbed you, and you
22 didn't know they were missing until they called you. It wasn't
23 like you knew someone stole from you." He's telling William
24 Roberts what to say. It's a lie. He's trying to influence
25 him, and that shows his continuing motive throughout the case

1 from back before the case began, while it was under
2 investigation right through and including the time it was here
3 in court.

4 In addition to the defendant's texts, he also in the
5 recorded calls repeatedly says "The guns were stolen. Tell
6 them the guns were stolen" in the first call, the guns were
7 stolen. "The shit was stolen. It got stolen. It got stolen."
8 He's telling the cover story, which makes no sense, and it's
9 not true, and it's improper to do that.

10 He also goes on to say, "Let me give you some expert
11 advice. They just got stolen. It's as simple as that."

12 He goes on to say --

13 Well, let me ask you something: If the defendant is
14 telling somebody what the story is, is he really looking out
15 for his best interest, or is he looking out for his own best
16 interests? Isn't he really improperly trying to influence him
17 by telling him what to say to protect himself for
18 accountability?

19 What about a year later, when he's in custody and he
20 makes phone calls using the jail system, and in this case
21 Kenneth Brobby mentions in this call on May 21 he's going to go
22 talk to the ATF guy? What was the tone of voice and demeanor
23 of the defendant, remember, when he heard that call? Do you
24 remember? "Don't. Don't. Whoa, whoa, whoa, whoa. Chill."
25 Afraid that he was going to cooperate and provide information.

1 Taking all stops out to make sure he doesn't do that. "Don't
2 do that. It's kind of good I called you. I'm not trying to
3 give you any advice to obstruct justice. All I'm saying -- for
4 the record, all I'm saying is I'm not trying to obstruct
5 justice." That's exactly what he was trying to do. He
6 repeated it because that's exactly what he was trying to do,
7 trying to get Kenneth Brobby to obstruct justice.

8 Certainly not there -- at the bottom Daniells says,
9 "They're not trying to help me out, and they're definitely not
10 trying to help you out." He's looking out for his own
11 interest. That's the improper motive. He's not giving him
12 expert advice at all, when you think about it. He's trying to
13 protect himself from accountability.

14 What's the second aspect of the efforts to
15 encourage -- discourage witnesses from coming to court? The
16 Georgetown Law Journal. Remember? That's the packet that was
17 intercepted that on the bottom line, the last line it says,
18 referring to this paper, "It's called the Georgetown Law
19 Journal." That's code. Georgetown Law Journal was nothing
20 more than a script or a playbook about what to do and what to
21 say in this very courtroom. We know it because we intercepted
22 it. PJ Copithorne provided us a copy that was provided to him
23 by Biko Kponou that was provided to him by the defendant. When
24 it was delivered, what was said? "This is from Mitchell."
25 What does the Georgetown Law Journal actually say? Well, it

1 says in code, it says what to do and what not to do. It
2 provides examples of what to say, and to take the Fifth
3 Amendment, even to the point of being held in contempt rather
4 than testifying against him.

5 The paperwork, not following the code, let them both
6 know if they're approached in the future to plead the Fifth,
7 not a single word, not even "hi." "Take the Fifth. You have
8 the right to take the Fifth. Take the Fifth. Don't testify
9 against me." That's what the Georgetown Law Journal was.
10 That's his game plan. That's what he did. That's what he
11 brought into this courtroom. "Stick to the story, the
12 Georgetown Law Journal." You're not following the code when
13 people were discussing, hey, it's the paperwork. I'll go talk
14 to Biko Kponou. I'm going to talk to witnesses about the
15 paperwork that you want me to give to them. The defendant was
16 insistent, no, it's the Georgetown Law Journal. "Stick to the
17 code," showing his improper state of mind, showing his motive
18 at the time.

19 What does he say about perjury? He describes it
20 should take 90 days for perjury, referring to PJ or Paul
21 Copithorne, rather than testifying on the stand against him,
22 because, you see, taking the Fifth Amendment, what he's really
23 saying is don't testify against me. If you come to court and
24 testify, I know you're going to tell them what I did.

25 Another section of the Georgetown Law Journal reflects

1 the Timothy Bailey aspect of it. This was supposed to be
2 delivered to Timothy Bailey. There's two things they want
3 Timothy Bailey to do. First is to take contempt. This time I
4 think it's a 30-day maximum, not even. Again, defendant's
5 words. This is what he wrote telling him to take the Fifth
6 Amendment, take the 30 days rather than coming in here and
7 testify.

8 The second part of it is equally troubling because he
9 asks him to file a false affidavit, lying under oath about what
10 happened to defendant's involvement in the sale to Bailey. Two
11 aspects of Timothy Bailey. Bailey didn't get the packet,
12 though. Remember? Biko Kponou says, "I didn't find him. I
13 didn't give it to him." But he did get the message, didn't he,
14 Timothy Bailey, right in the courthouse? What did the
15 defendant say to him, when they first arrested him and he came
16 into court? "You don't know me." What was he saying by that?
17 "Don't testify that you know me as being the person who sold
18 you that gun. You don't know me." Unlawful purpose, improper
19 purpose trying to influence the witness Timothy Bailey?
20 Absolutely.

21 What about the questions, that section of the script
22 of the Georgetown Law Journal? I brought two of them. One of
23 them says, "Is it possible that some or all of the testimony is
24 possibly false, fictitious or inaccurate? I'm not a hundred
25 percent certain of the above." Come on, you know what he's

1 saying there. Change your story, lie under oath.

2 In the second part he's talking about the brochures.
3 "Is it possible that you never actually saw any firearms or a
4 catalogue from Pennsylvania, you don't know for certain?" I
5 mean, come on. Members of the jury, add it up. He clearly was
6 trying to improperly affect, impede, obstruct this case.

7 Now, I expect the defendant is going to get up here
8 through counsel and talk at great length about the government's
9 witnesses. They have immunity. They have a plea agreement and
10 so forth. They shouldn't be trusted. Well, Timothy Bailey did
11 time on his plea agreement, and he expects to do more if he
12 doesn't tell the truth. The court does the sentencing on that.
13 What about the others? What is the linchpin of their ability
14 to avoid charges in the case? They have to tell the truth
15 before you.

16 But there's two important considerations of the
17 witnesses in this case. The first is they're not on trial.
18 They're not on trial. There's only one name on the verdict
19 slip that you're going to take into the back and vote on. It's
20 Mitchell Daniells.

21 The second important consideration for you. Who
22 picked them? Think about it. Who picked them? He picked
23 them. PJ Copithorne, his friend from grade school; Biko Kponou
24 and Kenny Brobby, middle school and high school; William
25 Roberts, his co-worker in the fracking industry; and Ashley

1 Turner, somebody he dated. He picked all these people. They
2 are the people that he dragged into this, and they came into
3 court.

4 I want to go to Ashley Turner though. Let's think
5 about her for a minute, the young lady who came in, single
6 mother, three kids including one with special needs. Doesn't
7 know anything about the gun trafficking. Just knows he came in
8 and asked me to buy guns for him, and he was going to pay me
9 for them, and I said no, he'd done that many times before.
10 Where is her motive to lie? I submit you could find she didn't
11 have a motive. What did she say arrived in the mail after she
12 was disclosed as a witness against him? What did she say
13 arrived in the mail? A letter from him, and she said she
14 believed, based upon reading it, that he was asking her to lie.

15 Now, you should look for corroboration amongst the
16 witnesses. Is there corroboration amongst the witnesses as
17 they're testifying about what occurred? For example, on the
18 trip I described four people were involved. You heard from
19 three of them, and they testified that the defendant is the one
20 who was involved in gun trafficking. Are their stories a
21 perfect match? Of course not. If there was a perfect match in
22 their testimony, you would justifiably find fault with that.
23 There is imperfections in their testimony, but look at what
24 they said and line it up and see if it's consistent. I submit
25 to you you will find it is.

1 But there are other forms of evidence that we talked
2 about and we introduced to you that also support the testimony
3 that we provided you. For example, the physical evidence.
4 Again, let's look at the obvious. Pennsylvania guns were found
5 here in Massachusetts right where the defendant was spending
6 time. That's the obvious. But there's more than that.

7 The 4473s match up to the guns that were purchased by
8 the defendant, by Will Roberts. How about the search of the
9 defendant's house and bedroom? What do we find there? An amo
10 box, Taurus gun keys. Oh, wait a minute now. Taurus gun keys.
11 You heard that those open -- allow unlocking of a Taurus
12 weapon. Six guns were purchased by William Roberts for the
13 defendant. Is it a shock that he has a Taurus gun key in his
14 house after six guns were bought? Of course not. Evidence is
15 corroborating both PJ Copithorne and William Roberts that that
16 was what occurred.

17 What else? The Dremel tool used to remove serial
18 numbers, PJ Copithorne says I saw him do it twice. That's
19 consistent with the types of marks that were found on the
20 weapons that he tried to remove, but the serial number,
21 restoration staff at the crime lab was able to restore them.

22 In his bedroom, what about the telephone records?
23 Again, telephone records, they don't lie. What do they show?
24 They show connectivity showing frequency of calls between
25 William Roberts, Kenneth Brobby and Paul Copithorne with the

1 defendant's phone. They're friends with him. They're
2 connected to him. They're speaking. What about connectivity
3 around times of the sales. The three trips that we saw in the
4 past, information in charts regarding that as well that show
5 that they were speaking and organizing the trips down and back
6 with the guns.

7 What about the firearm tracking -- excuse me. The
8 cell phone tracking of the defendant's phone leaving
9 Massachusetts, going to Pennsylvania, staying overnight on that
10 one night, March 26, 27 coming back, you saw the tracking of
11 them. You heard the testimony. What does it do? It supports
12 the people that were in the car saying that's what happened.
13 Right?

14 The forensics you heard, the photographs make it very
15 clear for you to see with your own eyes the matching of the
16 serial numbers from the firearms to the 4473s, including this
17 particular one that comes back to William Roberts, one of the
18 guns that he says he purchased.

19 Now, finally, what lengths would the defendant go to
20 impede a witness in the orderly administration of justice?
21 Well, let's look at this call to Kenneth Brobby which I submit
22 makes clear that he's paying off Kenneth Brobby not to tell on
23 him and not to appear and testify, because the money that was
24 discussed here was going to pay for Brobby's lawyer and
25 essentially what the defendant is saying is, "Nah, I'd

1 rather you not tell on me than give me \$500." Brobby says,
2 "Huh?" "Trust me," the defendant says, "I mean, I'd rather you
3 plead the Fifth than give me \$500."

4 Direct evidence from his lips of his improper state of
5 mind attempting to influence witnesses and to obstruct justice.

6 In conclusion, after you have the opportunity to
7 consider all the evidence and the witnesses that you've heard,
8 I'm going to ask you to return with a verdict finding the
9 defendant guilty of all four counts that you have for your
10 consideration: The charges of dealing firearms without a
11 license, possession of firearm while under indictment, witness
12 tampering and obstruction of justice.

13 MR. DEMISSIE: May we have HDMI1?

14 Thank you.

15 THE COURT: Do you want it up right away?

16 MR. DEMISSIE: You can test it.

17 THE COURT: I have it. Do you want it fully
18 displayed?

19 MR. DEMISSIE: Sure, yes.

20 CLOSING ARGUMENT BY MR. DEMISSIE

21 If we're talking about just the sale of a firearm, it
22 would be a different story. But you are being asked to answer
23 specific questions. The question you're being asked is not if
24 Mitchell Daniells sold a firearm. When we started out, one
25 thing I asked you to do is to wait until you hear the judge's

1 instruction, until you get a chance to deliberate before you
2 make up your mind, to pay attention to the witnesses, to listen
3 to the testimony and make your decision not based on emotion
4 but based on the evidence that you heard in this case.

5 I've watched you, and you've done that, and I thank
6 you for your attention, for your time and for being here, and I
7 hope you don't find yourself charged with a crime. Anyone can
8 find themselves in that position, and the promise we all get
9 from the system is that if we do, you will have a jury like
10 yourselves who will decide the case based on the evidence
11 presented.

12 So I'm going to walk through some of the stuff that
13 you have to decide. The way the government presented the case
14 is in such a way that you would look at other things than look
15 at the stuff that you need to make a decision. And I'll tell
16 you why that is.

17 Before you is the statute that charges, number one,
18 dealing in firearms without a license. You are asked to answer
19 the question whether Mitchell Daniells willfully engaged in the
20 business of dealing in firearms. Not whether he sold a gun,
21 not whether he sold a gun to a drug dealer, or whether or not a
22 person found with a gun had a machete in his car, as one of the
23 witnesses testified to. That's not stuff that helps you make a
24 decision. What helps you make a decision is whether or not his
25 conduct meets this requirement, whether he's devoted time,

1 attention, and labor in dealing in firearms as a regular course
2 of trade or business with a principle objective of livelihood
3 and profit.

4 What did you hear to help you decide whether he
5 engaged in dealing in firearms for livelihood and profit? What
6 did you hear that helped you decide whether he engaged in
7 dealing in firearms as a regular course of trade or business?
8 What you heard, based on the evidence, you heard these five
9 firearms, three of them were bought in 2015. Two of them that
10 were purchased by Mitchell Daniells in 2013 were found. One of
11 them involved a cash transaction. One. You heard no other
12 cash transaction from any witness. The total sum of evidence
13 regarding transactions involves a sale of a gun for \$500 more
14 than it was bought. That's it. What I'm trying to do is
15 direct your attention to the evidence you heard so that you
16 don't get swayed by stuff that does not help you decide the
17 case. The question that's being asked requires you to look for
18 evidence based on what you heard in this courtroom from
19 witnesses. Not what you think might happen. For all you know
20 there's two other guns in 2013 that could have been sold by
21 Copithorne, Brobby, could have been stolen. I don't know what
22 happened to them. I don't have any evidence of that. Neither
23 do you.

24 They presented one cash transaction. Copithorne said
25 he was present at an apartment where Mr. Daniells gave a gun to

1 a person named Figueroa. He didn't see money being exchanged.
2 That's the evidence.

3 The government did not prove that the principle
4 objective was livelihood and profit. That's what you have to
5 find. Engaged in the business of dealing in firearms as a
6 regular course of trade or business.

7 As you look at the case, as you look at the elements,
8 you have to find the government -- whether the government
9 proved the elements beyond a reasonable doubt or not. Look at
10 your notes, search your memory of the evidence, and see if you
11 have evidence that proves that. That's what I'm asking you to
12 do.

13 You didn't hear a lot about Mitchell Daniells. You
14 heard about certain things he's done from various witnesses,
15 and pretty much, except for one witness, the woman who came
16 from Pennsylvania, every other witness's testimony was
17 purchased by the government. It was purchased in return for
18 leniency in terms of Timothy Bailey. In the case of PJ
19 Copithorne, Kenny Brobby, William Roberts, it was purchased and
20 returned for non-prosecution.

21 PJ Copithorne said he stored -- he kept the guns in
22 his apartment. He kept guns in his apartment. They didn't
23 search his apartment. Then he said Mr. Daniells took them.
24 There's no evidence that he took them, other than his word. He
25 knew he was facing serious charges on the state side and

1 potentially on the federal side. And he came in and testified.

2 The judge will instruct you on how to evaluate
3 testimony by people who received benefit from the government.
4 These are not people who just, despite what they said they
5 wanted to do the right thing or they just want to tell the
6 truth. They've spoken to the government repeatedly over
7 several years. It's been going on since 2015. It's no secret
8 Mitchell Daniels was arrested June 18, 2015. He's been in
9 jail since then. He has a state pending charge that he has to
10 deal with when he's done with this. He's been talking to
11 people. What they've been saying to him is they've been
12 pressured, and it's in the phone conversations that are
13 recorded. He said people are coming -- telling me -- I'm not
14 naming names, but they're telling me they're being pressured to
15 say things they don't want to say, things that are not true.

16 And you look at the statement -- before I get there,
17 let's go to number 10. I'm going to talk about obstruction of
18 justice. Mr. MacKinlay said to you -- he talked about in terms
19 of obstruction of justice about Timothy Bailey and William
20 Roberts. The question you're being asked in this indictment is
21 whether from June 2016 continuing through June 2017 whether or
22 not Mitchell Daniels obstructed or impeded the due
23 administration of justice. He has absolutely no contact with
24 Timothy Bailey after June 2016. Timothy Bailey was arrested
25 back in June 2015. What I'm asking you to do is to answer the

1 question you're being asked, search your memory, look at your
2 notes to help you remember, and see for evidence, look for
3 evidence. Not stuff the government's telling you, but what you
4 heard. There's no testimony anyone contacted Timothy Bailey.
5 In fact, Biko said he didn't contact him at all.

6 William Roberts, Mr. MacKinlay just showed you some
7 messages back and forth. All that happened before June 2016.
8 It's not even part of this charge.

9 So you're being asked a specific question: Did
10 Mitchell Daniels, between June 2016 through June 2017,
11 obstruct justice by directing witnesses to recant truthful
12 testimony, to testify falsely, to assert their rights against
13 self-incrimination after they had already waived those rights,
14 to assert rights against self-incrimination even where such
15 right is nonexistent because of grounds of immunity? Not just
16 that he did that, but he did that with corrupt intent. I'm
17 going to talk to you about corrupt intent, because that's the
18 element that I think is crucial for your evaluation of this
19 charge.

20 What you will see from the statement that you will --
21 the statement that you will -- actually, the question. I'm
22 sorry, the questions.

23 What you will see is you'll have these questions that
24 were included in the package. The government presented to you,
25 and I ask that it be admitted in evidence, because it's the

1 main reason why the package was being given to people. You
2 will recall Biko was saying that he was helping the lawyer
3 interview witnesses. He was bringing witnesses to the lawyer's
4 office. And in the package -- this is a part of the questions
5 that Mr. Mitchell Daniells wrote out. And this was given to
6 Paul Copithorne. And this clearly shows the intent, the motive
7 for contacting and asking Paul Copithorne and Kenny Brobby to
8 provide information. The reason why he is contacting them is
9 because he believed the government was overreaching, pressuring
10 people to say certain things. When you look at these
11 questions, and you'll have it in the jury room, I ask you to
12 read it in full, and see if this indicates corrupt intent or an
13 intent to bring out additional evidence.

14 I, as a lawyer, can tell people you have a right to
15 the Fifth Amendment. That is advice I give. It's not because
16 I have more rights than anyone else. My intent is to advise
17 the person. You, anyone, can advise any other person about
18 their rights. If they don't know their rights, you can say to
19 a friend, "You can assert your Fifth Amendment." If your
20 intent is to impede by lying to the person, that's a different
21 story. Corrupt intent is where you come from a mindset, you're
22 not trying to get the truth out. You don't believe there's no
23 pressure exerted on the person to say something. You're not
24 trying -- you don't believe the person is hiding things. In
25 this case Mitchell Daniells believed these people that he's

1 contacting were pressured to say things that are not true. Not
2 everything, but some. Did not understand their rights, and
3 they were being placed in a position where they're compromising
4 their own position as well as his.

5 Telling someone to lie is a different story. Paul
6 Copithorne testified he was never told to lie. Kenny Brobby
7 testified he was never asked to lie. Paul Copithorne said no
8 one threatened him. Kenny Brobby said no one threatened him.
9 I guess when you talk about these dates, June 2016, 2017,
10 you're really talking about those two people.

11 And then both of them said no one offered them money.
12 The government talked about the tape where \$500 for a lawyer
13 was discussed. Listen to that tape. Not the transcript.
14 Listen to the tape. I ask if you listen to any tape, which you
15 can play in the jury deliberation, listen to the tape, not the
16 transcript. When you listen to the tape, you will see -- you
17 will hear Mitchell Daniels says -- in fact, he's not offering
18 him money. The witness, Kenny Brobby, was saying I couldn't
19 send you money. Listen to that. He said I couldn't send you
20 money. I used it for the lawyer. And as a joke he's laughing.
21 He says, "Well, you'd rather use it for a lawyer than give it
22 to me." People say stuff like "Tell on me." That doesn't
23 mean -- between two people who know each other like that, it
24 could mean anything. Say, "This guy likes guns. Tell on me."
25 He actually likes guns. He has guns.

1 You have the context, not just the words. How's it
2 said? He knows it's being recorded. He knows he's not
3 supposed to obstruct justice, which is why he said on the tape,
4 "I'm not trying to obstruct justice, but my motive is I want
5 you to know." He knows the government monitors. Everyone
6 knows that.

7 And what is he referring to about the Georgetown
8 Journal? Because he's sending it to someone to collect
9 evidence that he wants to use in court. He doesn't want the
10 government to know he's collecting evidence from these same
11 people the government had by that time -- they became so in
12 regular contact with the case agent, they learned their first
13 name. You heard from Kenny Brobby they show up at my
14 grandmother's house, I think he said. I don't know how they
15 know where I am. At different times they come to me. So
16 obviously he wants to have a confidential communication with
17 these witnesses where he's trying to collect an affidavit.

18 Now, the government doesn't own the truth. Just
19 because what they believe, what they packaged is the truth, it
20 doesn't mean that's what Mitchell Daniells believes.

21 He actually provided the reports themselves. Look at
22 these questions. He says page 654, line 4: "Is that true?
23 Did you feel coerced?" And the rest of the questions you will
24 see has more reference to pages, line numbers. "Is that true?
25 Is that accurate?" He's trying to get information that shows

1 some of the statement -- if you believe the government
2 presented everything they collected over the five years in the
3 past one week, that's not how it works. The government
4 collects a lot of evidence, and they select what to present.
5 When Mitchell Daniels sits in jail 24 hours looking at that,
6 he's addressing different things. Heck, there's even something
7 about someone being an escort. It's in the questions. You can
8 look at it. And he's says, "That's not true. Why did you say
9 that?"

10 These questions are two pages. You will have the full
11 two pages with you. Please read it. And the government
12 referred to that tape. Please listen to that tape, and whether
13 it's a sarcastic remark, if that's the crux of the government's
14 case that he corruptly persuaded or used that to obstruct
15 justice by saying, "Don't give me \$500 you wanted to give me,
16 use it for a lawyer," that's their case for obstruction of
17 justice?

18 Witness tampering. What you are required to do is
19 find that Mitchell Daniels corruptly persuaded. What is the
20 evidence that he corruptly persuaded? The package was actually
21 sitting at Biko's house for three months before he gave it to
22 Paul Copithorne. Paul Copithorne said he told me not to -- to
23 waive -- to assert my Fifth Amendment. Mitchell Daniels never
24 actually asked him to do that. He wrote a letter to Biko,
25 which Biko didn't take out of the package, but he gave the

1 package as is. So there's no persuasion by Mitchell Daniels
2 whatsoever. No persuasion applied on any witness. Again, we
3 are talking about between October 2016 through June 2017
4 there's no communication that we're dealing with, with Bailey
5 or with Roberts, really, Paul Copithorne and Kenny Brobby.
6 Both of them said -- Kenny Brobby said -- and it's your memory
7 that controls, but he said he wasn't told directly to do
8 something, but he got the impression. Corruptly persuade is
9 what you need to find. And every communication between Paul
10 Copithorne and Mitchell Daniels was recorded because he said
11 he never visited him in person. Every communication between
12 Kenny Brobby and Mitchell Daniels was recorded because he
13 didn't visit him in person. Where is the corrupt persuasion?
14 He did send them questions for them to answer. That's not
15 corrupt persuasion.

16 The government picked the charges in this case. As I
17 said, Mitchell Daniels faces a state court charge, possession.
18 You heard about a car stop. He told the officer, "I have a
19 gun, and I have a license." Apparently the Pennsylvania
20 license to carry, which he has --

21 MR. MacKINLAY: Objection.

22 MR. DEMISSIE: -- doesn't work in Massachusetts. So
23 he was charged.

24 However, what the government chose to do in this case
25 was charge him with being -- transport -- receiving a firearm

1 while being under indictment and dealing in firearms. From all
2 the federal charges, that's what they picked to do. They then
3 packaged the case to present that to you.

4 You heard from -- I called Agent McPartlin, and he
5 testified. I think his testimony is significant. There is no
6 federal license required to sell a firearm. There's no form
7 that you can engage in the regular business -- and I'm not
8 going to go over that. You already -- I think you get the
9 point. But in the end I also asked him about this charge, and
10 he said he didn't know the person who filed it. And then he
11 said from the application, from the complaint, it's a police
12 officer.

13 Then when he was asked by the prosecutor, is that
14 person a police prosecutor, he said yes, that's William Carlo,
15 a police officer. But he didn't know. Why is that important?
16 It shows a willingness to make facts fit. If that can happen
17 within 20 minutes, what can happen within a span of three, four
18 years when witnesses come repeatedly before them to say things?
19 How statements are left out, selected and packaged.

20 Even with that, the government has not proven its
21 case. They have not proven Mitchell Daniels engaged in
22 dealing in firearms for livelihood and profit. They have not
23 proven he tampered and corruptly persuaded a witness or engaged
24 in obstruction of justice. I admit the transfer of --
25 receiving a firearm under indictment is a difficult one. You

1 would have to find the knowing requirement. I'm asking you to
2 not base your decision on emotion because there's a lot of good
3 lawyering on the part of the government that brought emotion to
4 this case.

5 Can we get the --

6 And why am I saying that? Number 14, please. I'm
7 just giving you an example.

8 This is a Beaver Terrace apartment. The government
9 has many pictures of this house, 105A, but they picked the one
10 with a baby stroller.

11 Next is a picture of a gun found inside. They took a
12 picture next to a toy box. And the last one. They have
13 another picture. Same one. Why does it -- the picture of a
14 gun is not significant to the case. It's a gun they found.
15 It's not evidence that materially affects your decision. What
16 I'm asking you to do is we all have emotional reaction to
17 firearms. What I'm asking you to do is uphold the tradition in
18 this country where people, no matter what type of infamous,
19 reprehensible conduct they might have committed, receive a fair
20 trial.

21 It actually started in Massachusetts in March 1770,
22 when British soldiers fired on protestors in Boston known as
23 the Boston Massacre. You all have heard of that. None other
24 than John Adams represented the defendants, and the people of
25 Boston heard the evidence and gave them a fair trial and

1 acquitted them. You can't do that if you're not able to judge
2 the evidence without passion. I'm asking you to do that. And
3 I know if you do, and apply just the facts that you heard, just
4 the evidence on a set of questions in the indictment, read the
5 indictment, what he's charged with, and come to a conclusion as
6 to each element of the crime. When you do that, I'm confident
7 you'll arrive at the right verdict, and I ask you to find
8 Mitchell Daniels not guilty. Thank you.

9 THE COURT: Rebuttal?

10 Are you using any graphics for this?

11 MR. MacKINLAY: No, Your Honor.

12 THE COURT: Okay.

13 REBUTTAL BY MR. MacKINLAY

14 MR. MacKINLAY: Defense counsel just pointed out
15 something regarding federal licenses not required to sell guns.
16 That's not the law. Federal firearms license is required to
17 sell guns by someone who's engaged in a business like him.

18 This Pennsylvania license to carry, that's a red
19 herring. It's a distraction. It has nothing to do with this.
20 That was the testimony. It allowed him to possess a gun in the
21 State of Pennsylvania, not to sell them up here.

22 You also heard that he was a resident at the time in
23 Pennsylvania, and the people up here, including Timothy Bailey,
24 were residents in Massachusetts. You can't do that either.
25 You need a federal license. He didn't have one. He didn't

1 have one then. He never has. That was the testimony from the
2 ATF licensing witness.

3 With respect to intimidation, witness tampering, as
4 well as obstruction, take a look closely at the court
5 instructions because it's very clear that the obstruction
6 includes attempted but unsuccessful efforts to obstruct, and
7 that tampering includes attempts to tamper with witnesses, but
8 doesn't have to be successful. In other words, the fact that
9 these witnesses came in here into court doesn't mean he didn't
10 commit the crime.

11 Finally, the defendant through counsel argues that the
12 principle objective was not established that Mr. Daniells was
13 in this endeavor, scheme to make money. Why would Kenneth
14 Brobby front \$300, give him in advance \$300, and make the trip
15 down to Pennsylvania if he didn't think there was going to be
16 sales to make his money back? Why did PJ Copithorne front in
17 advance a loan, \$800 on the second trip, to the defendant if he
18 didn't expect there to be sales of those guns to pay him back?
19 The evidence is clear he was in this to make money, profit from
20 the sale of illegal gun sales, and that's just what he did.

21 JURY CHARGE - PART TWO

22 THE COURT: Jurors, you have been very patient and
23 attentive. I ask you to bear with me for just a few more
24 minutes while I complete my instructions.

25 I want to talk now about how you should go about

1 assessing the evidence in the case and fulfilling your
2 responsibility to resolve the issues that are presented.

3 There are two aspects to your deliberations. First,
4 you now have to decide what the evidence has proved or not
5 proved. It is your responsibility to determine what facts have
6 been established or not by the evidence. After you have made
7 those determinations, you must consider what the facts mean in
8 light of the principles regarding the elements of the charged
9 offenses that I gave you in the earlier part of the
10 instructions. That is, do the facts as you find them establish
11 that the charges against the defendant have been proved beyond
12 a reasonable doubt or not?

13 It's often said that jurors such as yourself are the
14 sole and exclusive judges of the facts of the case. You
15 determine the weight, the value, the significance, the effect
16 of the evidence that you've seen and heard, and you decide on
17 the evidence what conclusions you should draw about the issues
18 that are presented.

19 Your oath as jurors requires you to determine the
20 facts of the case without fear or favor, based solely on a fair
21 consideration of the evidence. That fundamental proposition
22 means two things.

23 First of all, of course, it means you are to be
24 completely fair-minded and impartial, swayed neither by
25 prejudice nor sympathy, by personal likes or dislikes toward

1 anybody involved in the case, or about the nature of the crime
2 charged. Your responsibility is simply to judge the true
3 meaning of the evidence fairly and impartially.

4 The second important point regarding your fair
5 consideration of the evidence is that the judgment must be
6 based solely on the evidence that has been presented in the
7 course of the case.

8 You may not go beyond the evidence by speculating or
9 guessing what other things might be true that were not shown.
10 Your responsibility is to resolve the issues so far as you can
11 by your consideration of the evidence that has been presented.
12 Your conclusion should be those that the evidence directs you
13 to. If there should be issues as to which the evidence is
14 insufficient or inconclusive so that you're not able to draw a
15 firm conclusion, then you have to leave any conclusion undrawn.
16 You may only draw those conclusions that the evidence supports.

17 I'm going to talk a bit more about the evidence in a
18 minute, but let me first remind you again what is not evidence.

19 I told you at the beginning of the case the lawyers'
20 summaries of the evidence in their openings, when they were
21 telling you what they expect what the evidence will be, and now
22 in their closings as they try to recall it for you, those are
23 not part of the evidence. They are an attempt to marshal the
24 evidence for you to try to persuade you to understand it in a
25 way that is consistent with their view. But to the extent your

1 appreciation of the evidence differs in any way from the way
2 the lawyers have either predicted it or now argued it, it's
3 your understanding and your assessment of it that control.
4 What the lawyers say cannot add to or subtract from the
5 evidence. You have heard the evidence, and it is your judgment
6 on that evidence that matters.

7 The evidence does not include questions. Only answers
8 are evidence. You may not consider any answer or evidence that
9 I directed you to disregard -- that happened on a couple of
10 occasions -- or that I directed to be stricken from the record.

11 The indictment is not evidence. You will have the
12 indictment before you in the course of your deliberations in
13 the juror room because it sets forth the charges that are made.
14 I caution you that the fact that a defendant has had an
15 indictment filed against him is not evidence that he has
16 committed the crime alleged, but simply a means of setting
17 forth what the government charges. The indictment only
18 proposes; you as the jury decide, based on the evidence,
19 whether what is proposed has been proved. And you are to
20 consider only the offenses that are charged in the indictment.

21 Now, let me address some of the things that are
22 evidence in the case.

23 You have a number of exhibits in the case. You will
24 have access to all those exhibits that have been admitted in
25 evidence, and you may consider them and give them whatever

1 weight, value, or significance you think they are fairly
2 entitled to receive. That judgment is entirely yours.

3 We are able to have the exhibits presentable to you in
4 digital form. You have no doubt seen the screen on the wall in
5 the jury room. You will get to use it. It is part of what we
6 call the Jury Evidence Recording System. The parties put their
7 exhibits in digital form into a drive, and it is fed into that
8 monitor. So you'll have complete control over it. When you
9 activate the touch screen when you go into the room to
10 deliberate, you will see a prompt for a tutorial. There is a
11 brief four-minute or so tutorial that teaches you how to use
12 the system. It is very simple and similar to using an iPad or
13 other tablet. You can scroll through the exhibits. Some
14 exhibits you can zoom in and out of. There's an index. So you
15 can call up an exhibit by entering the exhibit number on the
16 keypad and so forth.

17 Now, some of the exhibits in the case have been
18 physical exhibits or actual items. Those are available to you
19 as well. If you would like to view any of the physical
20 exhibits, you simply should write a note indicating which
21 exhibit or exhibits you would like to view and give the note to
22 the court security officer, and we will arrange for those
23 exhibits to be shown to you.

24 Also among the exhibits admitted into evidence were
25 recordings of telephone conversations. The recordings

1 themselves are the evidence, not the transcripts that were
2 provided to you to assist your listening. The transcripts will
3 not be provided to you during deliberations, but the recordings
4 are part of the evidence and will be on the system and you can
5 listen to them as you wish.

6 You may have noticed that during the trial exhibits
7 happened to be referred to as government exhibits or defense
8 exhibits as they were introduced. The fact that an exhibit is
9 marked by a particular party or introduced by a particular
10 party is useful for recordkeeping purposes, but the designation
11 is entirely irrelevant for your purposes.

12 In addition to the exhibits, you have the testimony of
13 witnesses who appeared here in the courtroom to answer
14 questions that were put to them. You ought to give the
15 testimony of each witness whatever weight, value, or
16 significance in your judgment it is fairly entitled to receive.
17 With respect to each witness, you should think about the
18 testimony and decide how much value or meaning it ought to have
19 to fair-minded people like yourselves who are looking for the
20 truth.

21 You may find, as you think about the evidence from a
22 particular witness, that you find credible, reliable, or
23 meaningful just about everything the witness has said, perhaps
24 just about nothing the witness has said, or perhaps something
25 between. Maybe there are some things from a witness you find

1 credible and reliable and other things from the very same
2 witness that you are more skeptical of or doubtful about.
3 There is no automatic rule. You don't have to accept any given
4 witness's testimony in total or reject it in total. You should
5 think about the testimony itself and accept what is meaningful
6 and reliable and reject what is not.

7 The principal factors you may consider in evaluating a
8 witness's testimony may be summed up as perception, memory, and
9 narration.

10 Perception: How good were the witness's observations
11 of events in the first place? What were the circumstances
12 under which they were made, and how did those circumstances
13 affect, if they did, the witness's ability to make accurate
14 observations of the events the witness has described?

15 Memory: How accurate and reliable is the witness's
16 recollection of events? Some people may have a better ability
17 to recall events in the past accurately. Sometimes, again, the
18 circumstances surrounding events may have an effect on the
19 ability of people to remember things. For instance, sudden,
20 unexpected events may be both perceived and remembered with a
21 different degree of accuracy than expected events that unfold
22 in an orderly pace.

23 Narration: How good, how accurate, is the witness in
24 narrating or telling what has happened? Is the testimony
25 truthful? Is it complete? Is the witness leaving out things

1 which, if known, might make a difference to the listener in
2 evaluating things? Is the witness careful in describing
3 things? Is the witness uncertain or confident? Is the
4 witness's narration consistent, or does it vary?

5 You may take into account any partiality or bias that
6 a witness might have toward one side or the other. Does the
7 witness have any reason, motive, or interest in the outcome of
8 the case or anything else that would lead the witness to favor
9 one side or the other in the testimony? A tendency to favor
10 one side or the other might be deliberate, an intentional
11 effort to favor one side, or it might be unconscious, arising
12 out of some affiliation or affinity with one side or the other.
13 Again, such tendencies could affect the reliability of the
14 testimony, and you ought to consider whether there has been any
15 such effect with respect to the testimony you've heard.

16 In this case, there has been testimony from several
17 witnesses who made agreements with the government. You heard
18 testimony from one witness, Timothy Bailey, who was charged in
19 connection with crimes that the government accuses Mr. Daniels
20 of committing and pled guilty after entering into a plea
21 agreement with the government. You heard that under that
22 agreement, the government agreed to make a favorable sentencing
23 recommendation with respect to Mr. Bailey based on his
24 cooperation with the government in this prosecution.

25 You also heard testimony from several witnesses,

1 including William Roberts, Kenneth Brobby, Paul Copithorne, and
2 Biko Kponou, who had knowledge of events giving rise to this
3 criminal prosecution and agreed to testify under a grant of
4 immunity. Immunity generally means that the witness's
5 testimony may not be used against him in a subsequent criminal
6 proceeding. A witness with an immunity agreement will be
7 prosecuted for perjury or false statement made while testifying
8 under a grant of immunity. The agreements of the witnesses
9 that I have just mentioned between the witnesses and the
10 government are in evidence for you to consider and review.

11 Now, it is legitimate for the government to enter into
12 these kinds of agreements. You may accept the testimony of a
13 person who testifies after entering into such a agreement, and
14 you may convict a defendant based even solely on such evidence,
15 so long as you are convinced of the defendant's guilt beyond a
16 reasonable doubt.

17 However, you should bear in mind that a witness who
18 has entered into an agreement for immunity from prosecution or
19 for a favorable sentencing recommendation from the government
20 may have a motive to tell the government what he thinks it
21 wants to hear. A witness who realizes that he may be able to
22 curry favor with the government and thereby obtain a more
23 lenient sentence or avoid criminal charges may have a motive to
24 testify untruthfully. So you should consider such testimony
25 with great care and caution. After your careful and cautious

1 consideration of such evidence, you may decide it is not
2 reliable and reject it, or you may decide it is reliable and
3 accept it as truthful. That judgment is yours alone.

4 Now, this is an important caution. The fact that
5 Mr. Bailey entered a guilty plea, and the others testified
6 under immunity, may only be considered in assessing the
7 credibility of their testimony. It is not a factor you may
8 consider in assessing the guilt or innocence of Mr. Daniells.
9 The witnesses who appeared at trial may be presumed to have
10 acted after an assessment of their own best interests for
11 reasons personal to them. Their decisions to plead guilty to a
12 criminal charge or to seek immunity from charges has no bearing
13 on the question whether the defendant is guilty of the offenses
14 charged against him in this case. As I've said, that question
15 is to be considered in light of all of the evidence you have
16 heard in the course of the case.

17 Now, consider the evidence as a whole. You should
18 consider the evidence from each witness not only by itself, in
19 isolation, as if that person were the only -- that witness was
20 the only person who testified, but also in the context of all
21 the evidence you have heard. For example, there might be a
22 piece of evidence about which you were originally skeptical.
23 Then you might hear other evidence that leads you to re-examine
24 your initial impression, and you begin to trust the questioned
25 evidence a bit more. The opposite might happen, of course, as

1 well. You might tend to accept something that sounds pretty
2 good at first. Then as you consider other evidence, you might
3 begin to doubt what you first tended to accept. So, again,
4 think of the evidence sensibly as a whole as you make sound
5 judgments about it.

6 You may make inferences from the evidence. We say
7 that a fact in a case like this can be proved by either two
8 kinds of evidence: direct evidence of the fact or
9 circumstantial evidence of the fact. Direct evidence is when
10 there is a piece of evidence which, if accepted, tends directly
11 to prove the fact. Often, it's simply an assertion. Suppose
12 somebody came into the courtroom now and said, "It's raining
13 out." Well, you would have to consider and decide whether the
14 person had any basis for knowing what the weather was like
15 outside and whether they could be trusted to tell you
16 accurately what the weather was. But if you are satisfied as
17 to those matters, then you could accept the assertion, and as a
18 result of accepting it, believe the fact that it was raining
19 out. Similarly, an exhibit or a piece of physical evidence
20 might be direct evidence of a fact.

21 Suppose, however, instead of having somebody tell you
22 directly what the weather was like, a person came into the
23 courtroom now wearing a wet raincoat and holding up a wet
24 umbrella. Even without any direct assertion being made about
25 what the weather was, you have some observation, some evidence,

1 from which you might draw the conclusion or inference that it
2 was raining outside, because in your common experience wet
3 raincoats and umbrellas are evidence of that fact.

4 An inference is simply a conclusion you draw from
5 available information that you have found to be reliable. I
6 point that out because sometimes you hear people say, "That's
7 just circumstantial evidence. That doesn't prove anything."
8 That saying goes too far because circumstantial evidence can
9 prove things if properly used. And if you think about it,
10 everyone probably relies on circumstantial evidence routinely
11 through the day. You walk into the kitchen and you see the tea
12 kettle steaming on the stove, you know enough not to put your
13 finger on the burner because you have drawn the inference that
14 the burner is hot.

15 You must be careful, however, in drawing inferences
16 that the inferences you draw are those that are genuinely
17 supported by the information that you're basing the inference
18 on. An inference, and consequently proof of a fact by
19 circumstantial evidence, cannot be an excuse for guessing or
20 speculating. If there are ultimate possible inferences from
21 the evidence, you can't just pick one you happen to like. You
22 have to be persuaded that any inference you make is superior to
23 other possible inferences based on the evidence and the
24 information you have.

25 And, of course, to the extent that you rely in a

1 criminal case on finding facts by circumstantial evidence, in
2 the end the elements of the offense in each case must have been
3 proven beyond a reasonable doubt.

4 Now, I told you at the very beginning of the case --
5 and I repeat it now, because this is very important -- the fact
6 that a person is charged with a crime is no evidence the person
7 has committed the crime.

8 The fact that an indictment has been returned against
9 a person tends not at all to prove that the person has done
10 what the indictment alleges. It is a means of presenting the
11 charge so that the matter can be tried in a full trial such as
12 we have had.

13 So you should give no weight or consideration to the
14 fact that a charge is made. Your judgment about whether the
15 defendant is guilty or not of the crimes charged must be based
16 on the evidence in the case and only the evidence in the case.

17 A defendant in a criminal case has the right
18 guaranteed by the Bill of Rights in our Constitution to choose
19 not to testify in the case. There may be many reasons why a
20 defendant would choose to invoke and exercise that right. You
21 may not under any circumstances draw any inference or
22 presumption against the defendant from the fact that he did not
23 testify. You should not even discuss the matter. You are to
24 decide the issues presented solely from your consideration of
25 the evidence that has been given in the case.

1 As I reminded you at the outset of the trial, the
2 defendant is presumed to be innocent of the crimes he is
3 charged with unless and until the government has proved by the
4 evidence that he is guilty and has proved that beyond a
5 reasonable doubt. The burden of proof rests with the
6 government. A defendant assumes no burden to prove that he is
7 innocent.

8 The question is never, "Which side has convinced me?"
9 but rather, "Has the government convinced me beyond a
10 reasonable doubt that the defendant is guilty?" If the answer
11 to that question is yes, the government is entitled to your
12 verdict of conviction. If the answer is no, then the defendant
13 is entitled to be, and must be, acquitted.

14 The burden placed upon the government to prove a
15 defendant's guilt beyond a reasonable doubt is a strict and
16 heavy burden, but it is not an impossible one. It does not
17 require the government to prove a defendant's guilt beyond all
18 possible, hypothetical, or speculative doubt. There are
19 probably very few, if any, things in human affairs that can be
20 proved to an absolute certainty, and the law does not require
21 that.

22 But the evidence must exclude in your minds any
23 reasonable doubt about the defendant's guilt of the crime he is
24 accused of. A reasonable doubt may arise from the evidence
25 produced or from a lack of evidence. If you conclude the

1 evidence may reasonably permit either of two conclusions with
2 respect to a particular charge -- one, that the defendant is
3 guilty as charged and the other, that he is not guilty -- then
4 you must in those circumstances find him not guilty.

5 Reasonable doubt exists when, after you've considered,
6 compared, and weighed all the evidence, using your reason and
7 your common sense, you cannot say that you have a settled
8 conviction that the charge is true. Conversely, we say a fact
9 is proved beyond a reasonable doubt if, after consideration of
10 all of the evidence, you are left with a settled conviction
11 that the charge is true.

12 A reasonable doubt is not speculation or supposition
13 or suspicion. It is not an excuse to avoid an unpleasant duty.
14 And it is not sympathy.

15 While the law does not require proof that overcomes
16 every conceivable or hypothetical doubt, it is not enough for
17 the government to show the defendant's guilt is probable or
18 likely even if it seems to be a strong probability. The
19 government must establish each element of the offense charged
20 by proof that convinces you and leaves you with no reasonable
21 doubt and thus satisfies you that you can, consistent with your
22 oath as jurors, base your verdict on it.

23 Again, if you are so convinced, then it is your duty
24 to return a verdict of guilty.

25 If, on the other hand, you have a reasonable doubt

1 about whether the defendant is guilty of the crime charged, you
2 must give the defendant the benefit of the doubt and find him
3 not guilty. I emphasize again that the defendant has no burden
4 to prove he is innocent. He is entitled to the verdict of "not
5 guilty" if the government has failed to prove him guilty beyond
6 a reasonable doubt.

7 Your verdict must be a unanimous one whether it is
8 guilty or not guilty. That is, you must deliberate until you
9 have reached a unanimous verdict with respect to the charges
10 presented.

11 Your function is to weigh the evidence in the case and
12 to determine whether the defendant is guilty or not guilty as
13 to each particular charge based solely on the evidence. Under
14 your oath as jurors, you are not allowed -- you must not allow
15 any possible punishment which may be imposed upon the defendant
16 to influence your verdict or enter your deliberations.

17 Let me see counsel at the sidebar, please.

18 **(SIDEBAR CONFERENCE AS FOLLOWS:**

19 MR. DEMISSIE: Your Honor, if I may be permitted to
20 make some objections on the substantive offenses because I
21 didn't get a chance to comment on the preliminary instruction.

22 I requested the definition of indictment under the
23 CFR, and I just note that objection.

24 THE COURT: All right.

25 MR. DEMISSIE: So I would object to the definition

1 given by the court that indictment qualifies -- the Waltham
2 District Court case qualifies as an indictment.

3 I also, Your Honor, would object that -- would ask the
4 court to instruct the jury that they must find that he knew the
5 complaint qualified as an indictment.

6 THE COURT: Okay.

7 MR. DEMISSIE: I object to the preliminary portion of
8 the obstruction of justice and witness tampering where the
9 court explained why -- the purpose of the statute. I think
10 that it should be excluded from the instruction.

11 The first element for corrupt -- for the charge of
12 witness tampering, attempt to corruptly persuade -- corruptly
13 persuade or attempt to corruptly persuade, the statute charges
14 him by directing witnesses directly. So he's not charged with
15 an attempt but by actual conduct. So for that purpose, I think
16 that should be corrected.

17 And that's it.

18 THE COURT: Okay. I'm not going to make any changes.

19 MR. MacKINLAY: Nothing from the government, Your
20 Honor.

21 MR. DEMISSIE: Thank you.

22 **END OF SIDEBAR CONFERENCE.)**

23 THE COURT: Jurors, just a few final comments.

24 One of the first things I suggest you do in your
25 deliberations is to select one of your members to act as

1 foreman of the jury. I leave that to you folks. That person
2 will have the responsibility to communicate with us when you
3 have a verdict. If you have any questions about the
4 instructions or about the law that you're unable to resolve
5 after discussion among yourselves, you may send us a note and
6 ask us a question about the law. We would rather have you ask
7 the question and get a correct answer than for you to guess or
8 be unsure about what principle of law applies.

9 We cannot, however, answer any questions about the
10 facts of the case or the meaning of the evidence and so on.
11 That is entirely and exclusively for you to determine.

12 By law, the deliberating jury will consist of 12
13 jurors. There are 13 of you. We always have a margin so that
14 if things happen during the course we don't lose jurors so that
15 we get below 12. In this case we lost a juror right off the
16 bat. We had two alternates. The alternate juror, using the
17 method we use to determine that, is the juror in seat number 3,
18 the third one in. You will be kept separately. You will be
19 here available to serve. Sometimes jurors -- we need this
20 because if someone falls by the wayside during deliberations,
21 then we have the alternate still available to participate, if
22 necessary.

23 The rest of you are the deliberating jury, and you
24 will conduct your deliberations and tell us when you've reached
25 a verdict. You all have the notes taken. Be respectful of

1 each other's note-taking abilities and memories. Please
2 remember that not anything any of you wrote down is necessarily
3 exactly the way things were said. So use it as a prompt to
4 your memory, but don't rely on it as a text. And we ask you to
5 deliberate with a mind towards hearing each out and considering
6 the evidence seriously as a group and, if you can, coming to an
7 agreement.

8 Each juror is entitled to his or her own opinion, and
9 in the end each should render a verdict which represents that
10 juror's own conscientious view of the evidence. That doesn't
11 mean that you don't listen to each other and deliberate
12 collectively.

13 So, jurors, we now ask you to withdraw, deliberate
14 upon the evidence, and return when you have reached a verdict.

15 THE CLERK: All rise for the court and the jury.
16 (Jury exits.)

17 MR. DEMISSIE: Your Honor, the indictment is going to
18 the jury --

19 THE COURT: Yes.

20 MR. DEMISSIE: -- and the one that was previously
21 filed just says "witnesses known to the grand jury number 1, 2,
22 3, 4, 5."

23 THE COURT: Yes.

24 MR. DEMISSIE: Do we name the names?

25 THE COURT: No, because it's the indictment as it

1 exists.

2 MR. DEMISSIE: They just don't know the names is what
3 I'm saying. That's the problem.

4 THE COURT: They have evidence.

5 MR. DEMISSIE: Okay. Thank you.

6 (Court exits.)

7 (Jury deliberating.)

8 THE CLERK: All rise.

9 (Court enters.)

10 THE CLERK: Continuation of the Daniels trial. Be
11 seated.

12 THE COURT: So the jurors have sent a note, which I'll
13 read for the record, although it will be marked as an exhibit.
14 I should say I'll read, to the best of my ability, because the
15 penmanship is a little bit questionable.

16 "We need clarification on whether we have to prove
17 only one gun or selling multiple."

18 Here's what I propose: I propose to tell them that at
19 pages 9 and 10 of the written instructions, they have a
20 description of what needs to be proved under Count 2. They
21 should take that as the guidance and discuss it among
22 themselves. In other words, I'm not going to add or subtract,
23 but simply -- this is the reason -- this is a rare event for me
24 to give them the transcript, but I anticipated because of the
25 nature of some of the charges, that it would be best if they

1 had a source that they could simply look at and debate.

2 What conclusions they draw in line with those
3 instructions is up to them. I'm not going to -- I don't intend
4 to vary it. So I guess I tell what I propose, and I invite any
5 objection.

6 MR. DEMISSIE: So they would be given just 9 and 10,
7 or they already have the entire --

8 THE COURT: They have the entire instructions.

9 MR. DEMISSIE: Okay.

10 THE COURT: I'm just going to refer -- this seems
11 quite plainly about Count 2.

12 MR. DEMISSIE: Yes.

13 THE COURT: So I'm just -- well, if you prefer, I can
14 say I have given you instructions, written instructions, which
15 describe what need to be proved under each of the four counts.
16 I don't intend to say any more than that. You have the
17 instructions. I wouldn't give them any differently now than I
18 gave them this morning.

19 MR. DEMISSIE: Yeah, referring them to 9 to 10 makes
20 sense, because I think that's --

21 THE COURT: Well, yes, although it could be viewed as
22 restrictive as well. Maybe what I'll do -- I could say, "You
23 have the written instructions. You should consider them
24 sensibly as a whole. This appears to be about Count 2. The
25 instructions regarding Count 2 are pages 9 and 10. I direct

1 your attention to those instructions."

2 MR. DEMISSIE: Sometimes it's helpful to say, "You've
3 heard all of the evidence, and your decision would be based on
4 the evidence you heard, and we're not going to comment on the
5 evidence." I don't know if that may be helpful.

6 THE COURT: I don't want to be that -- I don't want
7 to -- once I begin talking about other subjects, there's no way
8 of drawing a neat line where to stop. One way to draw a neat
9 line is to refer only to Count 2, which is what it appears to
10 be. On the other hand, I could simply refer them to the
11 written instructions as a whole.

12 MR. DEMISSIE: That's fine, Your Honor.

13 THE COURT: Which is fine? Which way, Mr. Demissie?

14 MR. DEMISSIE: I think it makes sense, the instruction
15 as a whole, and referring to pages 9 to 10. That makes sense
16 to me.

17 MR. MacKINLAY: I think that's fine, Your Honor. The
18 instruction as a whole, and a reference to 9 and 10, just for
19 their ease, but I don't think going beyond that is necessary.

20 THE COURT: Okay. Let's get the jurors, including the
21 alternate.

22 THE CLERK: All rise for the jury.

23 (Jury enters.)

24 THE COURT: Jurors, we received a note from you asking
25 for clarification on a point. You have a written copy of the

1 instructions which I gave you. I would not give you any other
2 instructions. I refer you to the written copy. I infer from
3 the question you're thinking about Count 2. The instructions
4 pertaining to Count 2 are found at pages 9 and 10. I wouldn't
5 say anything any differently than I said it this morning, and
6 you have that. Okay?

7 We'll ask you to continue your deliberations.

8 THE CLERK: All rise for the court and the jury. The
9 court will be in recess.

10 (Court and Jury exit.)

11 (Jury deliberating.)

12 THE CLERK: All rise for the court and the jury.

13 (Court and jury enter.)

14 THE CLERK: Be seated.

15 THE COURT: Jurors, you've had a long day. We're
16 going to call it quits for the day and resume tomorrow.

17 I instruct you to have no discussions about anything
18 that has gone on in the jury room with anybody, including
19 yourself. Put the case on hold overnight. Enjoy your evening.
20 Come back refreshed. And we'll start again at 9:00 and resume
21 the deliberations in the morning. All right? Enjoy the
22 evening, and we'll see you tomorrow.

23 THE CLERK: All rise for the court and the jury.
24 Court will be in recess.

25 THE COURT: Let me add one thing I should add. As

1 you're gathering, until you've come into the courtroom and
2 we've put it on the record that you've returned, don't begin
3 your deliberations anew until that formal event has occurred.

4 Okay. Thanks.

5 (Court and jury exit.)

6 (The proceedings adjourned at 4:48 p.m.)

C E R T I F I C A T E

UNITED STATES DISTRICT COURT)
DISTRICT OF MASSACHUSETTS)

I certify that the foregoing is a correct transcript
from the record of proceedings taken May 29, 2019 in the
above-entitled matter to the best of my skill and ability.

/s/ Kathleen Mullen Silva

5/20/20

Kathleen Mullen Silva, RPR, CRR
Official Court Reporter

Date